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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:

EVANDER F. KANE,

Debtor.

BK Case No.: 21-50028 SLJ

Chapter 7

SOUTH RIVER CAPITAL, LLC

Appellant,

v.

EVANDER F. KANE,

Appellee.

Case No. 3:21-CV-03493-WHO

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF APPELLANT'S
OPPOSITION TO APPELLEE'S MOTION TO DISMISS APPEAL AS
MOOT

1 Appellant, South River Capital, LLC, hereby asks the court to take judicial
2 notice of the announcement by the National Hockey League of Evander F. Kane's
3 new contract with the Edmonton Oilers. The request is made pursuant to Federal
4 Evidence Code Section 201(b)(2).

5 The article is published on the National Hockey League's website at:
6 [https://www.espn.com/nhl/story/_/id/33160897/evander-kane-signs-edmonton-](https://www.espn.com/nhl/story/_/id/33160897/evander-kane-signs-edmonton-oilers-how-got-here-how-fit-in)
7 [oilers-how-got-here-how-fit-in.](https://www.espn.com/nhl/story/_/id/33160897/evander-kane-signs-edmonton-oilers-how-got-here-how-fit-in)

8 Attached is a pdf copy recovered from the website on March 3, 2022 at
9 11:00 a.m. provided for the Court's convenience.

10 Paragraph (b)(2) of Federal Rule of Evidence 201 states in part that "[t]he
11 court may judicially notice a fact that is not subject to reasonable dispute because
12 it. . . can be accurately and readily determined from sources whose accuracy
13 cannot reasonably be questioned." There is no reason to believe that the National
14 Hockey League would not accurately describe the news regarding NHL players.

15
16 Dated: March 8, 2022

BINDER & MALTER, LLP

17
18 By: /s/ Wendy Watrous Smith
19 Wendy Watrous Smith, Attorneys for
20 South River Capital LLC
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Exhibit A

Evander Kane signs with Edmonton Oilers: How we got here and how he'll fit in

USA Today Sports

Jan 27, 2022

- **Kristen Shilton**
- **Greg Wyshynski**
-
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The NHL announced on Thursday it had concluded an investigation into free-agent forward [Evander Kane](#) and the circumstances under which he traveled across the U.S.-Canada border during the holiday period, clearing the way for Kane to sign with an NHL team.

The [San Jose Sharks](#) terminated Kane's contract after he cleared waivers earlier this month, saying it was for a breach of his contract and for violating COVID-19 protocols.

ESPN's Kevin Weekes confirmed [Kane had reached a verbal agreement](#) with the [Edmonton Oilers](#) on a one-year deal worth approximately \$1 million and a prorated cap hit of approximately \$2 million. It also includes a no-move clause.

1 Kane could make his debut with the Oilers as soon as this weekend.

2 Before that, here's a look at how Kane ended up in Edmonton and what his
3 addition could mean for the struggling Oilers.

4 **How did we get here?**

5 Let's start at the beginning of the season, when Kane was still a member of the
6 Sharks.

7 **NHL All-Star Weekend**



24 The NHL All-Star Weekend begins with the Skills Competition on **Friday, Feb. 4**
25 **at 7:30 p.m. ET on ESPN.** The All-Star Game will be broadcast live
26 on **Saturday, Feb. 5 on ABC and ESPN+, beginning at 3 p.m. ET.**

- 27 • [More on All-Star Game](#)
- 28 • [NHL Fan Skills at Home contest](#)

1 • [Sign up for ESPN+](#)

2 Heading into the year, NHL players and support staff had all been encouraged to
3 be double-vaccinated for COVID-19, and the majority of the league was said to
4 have complied -- including Kane, who told TSN in an interview released on
5 Thursday that he was vaccinated before Sharks training camp.

6 On Oct. 5, the NHL began investigating Kane over allegations that he had been
7 using a fake vaccination card. Doing so would not only violate Canadian and U.S.
8 laws, but also is against NHL rules.

9 On Oct. 18, the league concluded its inquiry and levied a 21-game suspension
10 against Kane for violating its policy and using a fake vaccine passport. Kane
11 released a statement saying he "made a mistake, one I sincerely regret" and
12 pledged to receive counseling toward making better choices in the future.

13 When Kane finished serving his suspension, the Sharks placed him on waivers. He
14 cleared and was reassigned to the American Hockey League's San Jose Barracuda.
15 After appearing in just five AHL games, Kane tested positive for COVID-19 and
16 entered AHL COVID protocols.

17 On Jan. 8, the Sharks released a statement saying they had placed Kane on
18 unconditional waivers for the purposes of buying out his contract "for breach of his
19 NHL Standard Player Contract and for violation of the AHL COVID-19
20 protocols."

21 Kane was in the fourth season of a seven-year, \$49 million pact and would lose
22 \$22.8 million from the remainder of the deal. The NHLPA filed a grievance on his
23 behalf.

24 **What were the results of the NHL's latest Kane investigation?**

25 The NHL was investigating Kane for a violation of the league's COVID-19
26 protocols while playing for the AHL's San Jose Barracuda, specifically for crossing
27 from the U.S. into Canada.

28 Kane tested positive for COVID on Dec. 21 and flew to Vancouver on Dec. 29. At
issue was whether Kane had the required medical clearance to be on a flight to
Vancouver while in the 10-day AHL protocols. Additionally, the Barracuda had
expected Kane to return on Dec. 31, and he didn't report until Jan. 6.

1 **EDITOR'S PICKS**



4 [**NHL clears Kane; winger, Oilers agree to contract**](#)

5
6 35dEmily Kaplan



9 [**NHL contender tiers at midseason: Where every team ranks**](#)

10
11 31dGreg Wyshynski



14 [**NHL Power Rankings: Points pace progress against preseason over-unders**](#)

15
16 36dKristen Shilton

17 Kane told TSN in an interview that aired Thursday that the NHL "was looking into
18 whether I had crossed the border illegally" into Canada. "I don't even understand it.
19 I had zero issues going into Canada. I don't understand how you cross the border
illegally," he said.

20 On Thursday, the NHL announced it decided not to pursue any additional league-
21 imposed discipline against Kane "at the current time," thereby clearing him to sign
22 with the Oilers.

23 The NHL said the investigation was conducted by Patterson Belknap Webb &
24 Tyler LLP. The report it generated said there was insufficient evidence to
25 "conclusively find that Mr. Kane knowingly made misrepresentations regarding his
COVID-19 status or test results in connection with his international travel."

26 This investigation is a separate issue from the one Kane has with the Sharks over
27 his termination. The team claims he breached his standard player contract. The
28 NHLPA filed a grievance on his behalf, which has not yet been resolved.

1 It was another in a string of investigations into Kane over the past year. Along with
2 the 21-game suspension, the NHL investigated allegations of domestic assault
3 made by his estranged wife, Anna Kane, from a divorce filing. The league
4 concluded that "the allegations of domestic abuse made against Kane by his
estranged wife could not be substantiated."

5 Kane also was accused by Anna Kane of betting on NHL games, including his own
6 games with the Sharks, but the league cleared Kane, saying it found no evidence
7 that he bet on hockey, which would be in violation of league rules.

8 Due to these investigations, the Sharks did not invite Kane to training camp.

9 **Why would the Oilers want Kane now?**

10 Back on Jan. 12, Edmonton general manager Ken Holland was asked about
11 potentially targeting Kane to help the flagging Oilers. Holland confirmed he'd been
12 in touch with Kane's agent, Dan Milstein (who also represents [Pavel Datsyuk](#), a
13 stalwart on Holland's teams from his days with the [Detroit Red Wings](#)), and didn't
14 rule out the possibility of bringing in the forward.

15 "I believe in second chances," Holland said. "It's hard to be perfect. We're all
16 people. We all make mistakes. Some make big mistakes. Some make little
17 mistakes. But it's hard to be perfect. ... [Everyone] should be entitled to a second
opportunity once they do some of those things."

18 Putting the off-ice issues aside, the Oilers could use the help, and Kane is a
19 productive player. He registered 22 goals and 29 points in 56 games last season
20 and hasn't pocketed fewer than 20 goals in a full season since 2013-14.

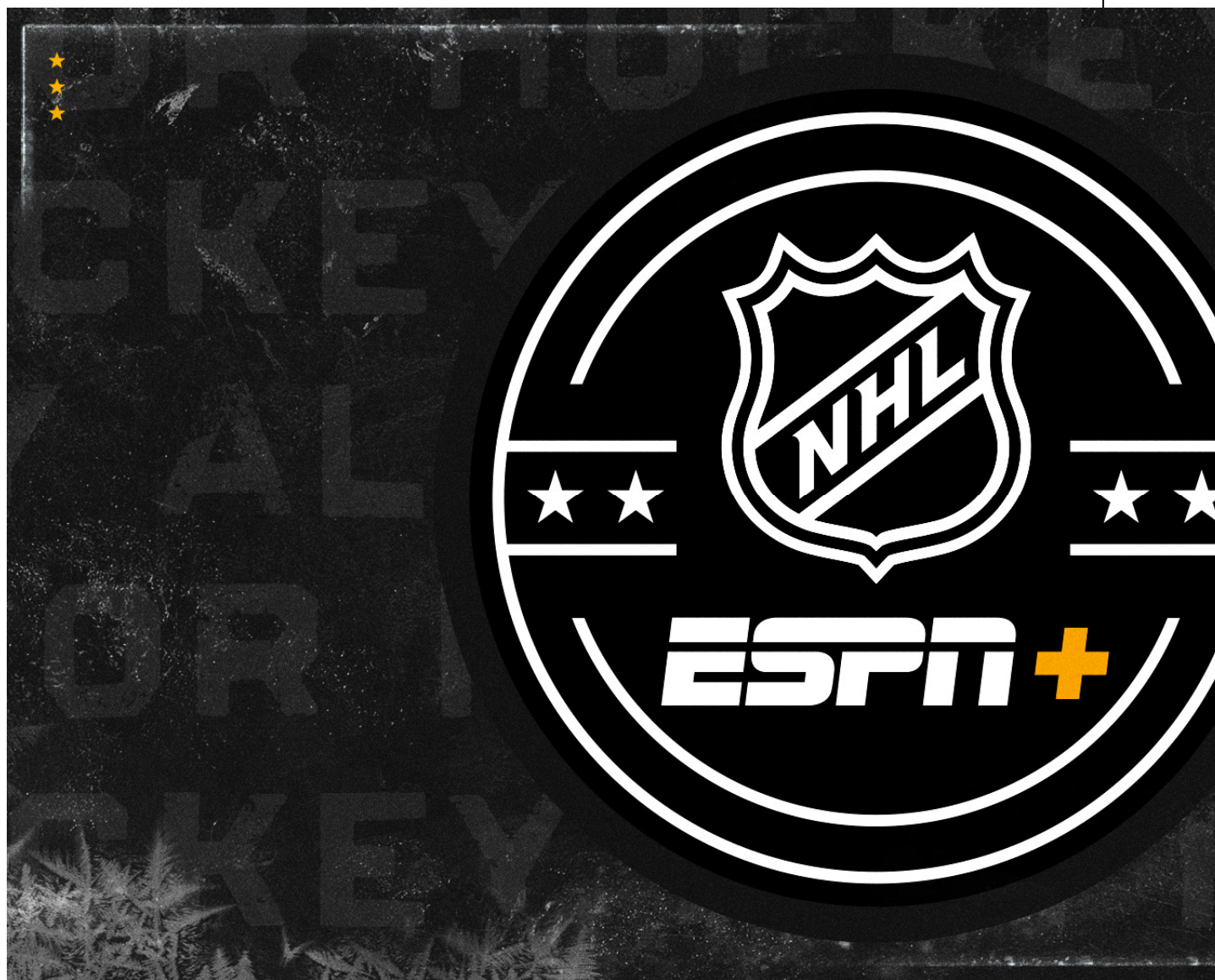
21 Meanwhile, scoring in Edmonton has been inconsistent unless it's been
22 from [Connor McDavid](#) or [Leon Draisaitl](#). Only four Oilers are in double digits in
23 goals scored, and since Jan. 1, Edmonton has averaged fewer than 2.50 goals per
game (26th in the NHL).

24 Missing the playoffs is simply not an option for the Oilers. And Holland has said
25 he doesn't want to part with a first-round pick to bring in temporary help at the
26 trade deadline. Kane checks a couple of boxes then, given that he comes at a
27 relatively inexpensive price, without Edmonton having to give up any other assets,
28 and has a high potential upside on the score sheet.

1 **How will his game fit with McDavid and Draisaitl?**

2 McDavid raised some eyebrows earlier this month when asked about Kane
3 potentially joining the Oilers.

4 **Watch NHL games on ESPN networks**



24 This season will include 103 exclusive regular-season games across ESPN,
25 ESPN+, Hulu and ABC, and more than 1,000 out-of-market games will be
26 available on ESPN+.

- 27 • [How to watch](#)
28 • [Subscribe to ESPN+](#)

1 • [Stream the NHL on ESPN](#)

2 "Obviously Evander is an amazing player," McDavid said. "And he's had lots of
3 success over the last couple of years, and whatever else is going on, it's not
4 something I look into much. ... I'm not really here to discuss optic issues. If fans
5 don't like it, or the media doesn't like it, or whatever. It is what it is."

6 While shrugging off Kane's issues drew plenty of criticism toward Edmonton's
7 captain, McDavid is also staring at yet another failed season in orange and blue.
8 The Oilers were swept in the postseason last year by Winnipeg, and have advanced
9 to the second round of the playoffs just once in his career. Rightly or wrongly,
10 McDavid's comments indicate his priority remains winning hockey games and
11 bringing on whoever can help.

12 Kane would be a real asset to McDavid's wing and give the center a formidable
13 playmaker to work with. Same with Draisaitl. Both pivots need help from
14 linemates generating offense and Kane has a proven track record of producing.

15 Meanwhile, Kane wants to play for a contending team and revitalize his career. At
16 age 30, there's not a ton of runway to do that. To have a shot at skating with
17 McDavid and Draisaitl, capitalizing on their considerable skill sets as they will his,
18 has to be a dream scenario for Kane.

19 **What are the salary-cap implications for Edmonton?**

20 Kane's contract is for the rest of the season. ESPN first reported that Kane's deal
21 carries a prorated cap hit of around \$2.1 million. It has a base salary of \$750,000
22 and a signing bonus of \$625,000.

23 You might notice that the base salary and the signing bonus do not add up to \$2.1
24 million. [Cap Friendly reports](#) that since Kane's contract is for one year, contains a
25 signing bonus and was signed after the season started, it has an inflated cap
26 hit. [According to PuckPedia](#), since the deal was not signed by 5 p.m. ET on
27 Thursday, the actual cash due to Kane is \$970,000.

28 The Oilers had around \$1.68 million in cap space before bringing in Kane. They
can move some salary around to create the necessary space for him. But it's clearly
going to be a challenge for Edmonton to make any more impactful moves around
the trade deadline without sending salary back to its trading partner -- and the

1 Oilers could certainly use some help in goal.

2 We should add that Kane has a full no-movement clause, something that Holland is
3 known for handing out as a general manager. But it seems being Evander Kane is
4 something of its own no-movement clause, as the Sharks found out.

5 **What are other options for the teams that missed out on Kane?**

6 Figuring out the actual market for Kane's services was tricky. There were reports
7 that every playoff contender in the league did some due diligence on him. But in
8 the end, multiple reports stated that the Oilers and the [Washington Capitals](#) were
9 the teams left standing at the end of the process -- and sources told ESPN last week
10 that Edmonton was basically a done deal.

11 Among the other forwards who could be available at the trade deadline are San
12 Jose's [Tomas Hertl](#), Boston's [Jake DeBrusk](#) and Arizona's [Phil Kessel](#), whose
13 paltry base salary of \$850,000 makes acquiring him an even thriftier financial
14 move than signing Kane -- although obviously with something having to be sent
15 back to the Coyotes.

16 Suffice it to say, no one available at the trade deadline would arrive with the
17 baggage that Kane brings to Edmonton.

18 [https://www.espn.com/nhl/story/_/id/33160897/evander-kane-signs-](https://www.espn.com/nhl/story/_/id/33160897/evander-kane-signs-edmonton-oilers-how-got-here-)
19 [edmonton-oilers-how-got-here-](https://www.espn.com/nhl/story/_/id/33160897/evander-kane-signs-edmonton-oilers-how-got-here-)
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